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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,239	12/16/2003	Renoo Avinash Blindt	T7101(V)	6357

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EXAMINER

MAHAFKEY, KELLY J

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 02/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/737,239

Applicant(s)

BLINDT ET AL.

Examiner

Kelly Mahafkey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12/16/03
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2/17/04</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3-5, 7-9, 12, 13, 15, and 16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Devine et al. (WO 00/30470).

3. Regarding claim 1, Devine et al. (Devine) teaches of a thermally reversible gel, which is used to produce a bi- or multi- layered food product (Abstract). In Example 1, Devine teaches of combining two thermo-reversible gels in order to form the multi-layered food product, either the top layer gel or the base layer gel can be considered the thermo-reversible gel A as recited in claim 1. Both contain flavor and therefore when mixed with one another comprise composition B, both are heated to at least 60C, both comprise a polysaccharide gelling agent and at least 1% protein (gelatin), and both are allowed to set in a mould. The layers of Example 1 are mixed in a 66% base layer to 33% top layer fashion (i.e. 50-98% of composition B can consists of 66% of a composition A (base layer) as recited in claim 1). Regarding the step of opening a closed container as recited in claim 1, Devine teaches of the gel composition (which includes thermo reversible gel A) set in a mould and covered with foil prior to consumption (Pages 19 and 20). Because the gel is covered before it is consumed,

Devine inherently teaches of removing the lid (i.e. foil) of a closed container of thermo reversible gel in order to consume the gel.

4. Regarding claims 3, 4, 8, 9, 15, and 16, Devine et al. (Devine) teaches of a thermally reversible gel, which is used to produce a bi- or multi- layered food product (Abstract). Devine teaches that the gel composition can include polysaccharide gelling agents such as agar and gellan as recited in claim 3 (Page 5). Devine teaches that the polysaccharide gel is heated to 70C (between 60-95C) as recited in claim 4 (Example 1). Devine teaches that the gel can include or can be substantially free of carrageenan as recited in claim 8 (Page 5). In Example 1, Devine teaches that the thermally reversible gel contains at least 1% protein (gelatin) as recited in claim 9. Devine teaches that the polysaccharide gel can contain 60-99% fat and water and 1-50% fat as recited in claims 15 and 16 (Example 1). Note: Caramel is defined as containing sugar, butter (which includes fat), flavoring, and cream or milk.

5. Regarding claims 5, 7, 12, and 13 Devine et al. (Devine) teaches of a thermally reversible gel, which is used to produce a bi- or multi- layered food product (Abstract). In Example 1, the final composition as taught by Devine includes 60-99% fat and water as recited in claim 5, 1-50% fat as recited in claim 12, and a cream as recited in claim 13. Regarding claim 7, Devine teaches in Example 1 of the gel as setting at 10C. It is inherent that if a temperature of 10C is utilized, cooling must be applied.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lisa (<http://www.recipelink.com/gm/1/2457>) and in view of Norton et al. (US 5508056) and in view Cheesecake World (<http://webarchive.org/web/20000510232206/http://cheesecake.northwest.com/>).

9. Regarding claims 1, 6, 7, 9-11, 13, and 14, Lisa teaches of opening a closed container of a thermo-reversible gel (i.e. to remove cream cheese from the four packages), adding flavor (i.e. lemon extract) to the gel, heating the gel at least above 60C to provide a combined gel with at least 1% protein (i.e. contained in 4 eggs), and allowing the gel composition to set in an edible mold (i.e. graham crackers and sugar crust). Lisa teaches that the gel consists of 50-53% (32/64-32/60 ounces) of the final

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composition. Note: It is known that 1 egg is 3-4 ounces. See below for the compositional profile:

- a. Total Filling Composition = about 60-64 oz.
  - i. 4 x 8oz. Cream cheese = 32 oz. Cream cheese
  - ii. 4 eggs = 12-16 oz. Eggs
  - iii. 2 cup sugar- 1TBSP (for crust) = 16 oz. -0.5oz. = 15.5 oz. Sugar
  - iv. 1/8 tsp salt = 0.02 oz. salt
  - v. 1/2 tsp lemon extract = 0.83 oz. lemon extract

Specifically regarding claims 9-11, Lisa teaches of a product, which contains at least 1% globular dairy proteins. Cream cheese consists of at least 1% globular dairy proteins. Specifically regarding claim 7, Lisa teaches that "when cool... Top (the cheesecake) with..." Therefore, Lisa teaches of applying cooling after the cooking of the cheesecake or gel in order for a topping to be applied.

10. Lisa, however, is silent to the cream as based on a polysaccharide gelling agent as recited in claim 1, as having a pH of below 6.0 as recited in claim 2, as free of carrageenan as recited in claim 3, as heated to 60-95C as recited in claim 4, as comprising 60-99% fat and water as recited in claim 15; and as comprising 1-50% fat as recited in claim 16. Lisa is silent to the final gel composition as comprising 60-99% of water and fat as recited in claim 5, as containing a specific thermo-reversible polysaccharide gelling agent as recited in claim 8, and as containing 1-50% fat as recited in claim 12.

11. Norton et al. (Norton) discloses of a thermo-reversible gel which can be used to replace cheese spreads, such as cream cheese (Abstract, Column 2 lines 62-68 and Column 4 lines 20-24). Norton teaches that the gel of the invention is low fat, has a good flavor, good texture, does not have a grainy appearance, and has excellent melting behavior in the mouth. Norton also teaches that his products are high quality with a simple and short production process. Refer specifically to Column 1 lines 60-68. Norton teaches that the gel contains gelling polysaccharides such as agar and does not include gelling agents such as carrageenan (Column 2 lines 62-68). Norton teaches that the gel contains 10-60% fat, 0.5-15% proteins, and 30-88% water (Column 2 lines 13-20, Column 3 lines 59-65, and Column 4 lines 10-15). Norton teaches that the gel is mixed at a temperature of 85C (Column 4 lines 46-51). Norton teaches that acidifiers may be incorporated in the product to bring the pH to a desired level, preferably between 3.5 and 7 (Norton includes the range of 3.5-5.9). Refer specifically to Column 3 lines 47-58.

12. Regarding claims 1, 2-5, 8, 12, 15, and 16, it would have been obvious to substitute the cream cheese as taught by Lisa with the cheese spread substitute as taught by Norton which would be based on a polysaccharide gelling agent as recited in claim 1, would have a pH of below 6, would be free of carrageenan as recited in claim 3, would be heated to 60-95C as recited in claim 4, would comprise 60-99% fat and water as recited in claim 15, would comprise 1-50% fat as recited in claim 16, and create a

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final gel composition which would comprise 60-99% of water and fat as recited in claim 5, would contain agar as recited in claim 8, and would consist of 1-50% fat as, recited in claim 12. One would have been motivated to do so in order to gain the benefits of the cheese spread substitute taught by Norton, such as a high quality analog with good flavor, texture, and melting properties which was simple and short to produce. Because both deal with thermo-reversible gels one would have a reasonable expectation of success from the combination. Cheesecake World further teaches the conventionality and desirability of substituting packaged low fat cream cheese with traditional packaged high fat cream cheese in cheesecake (Red, White & Blue Cheesecake).

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

14. US 5458904 discloses of a gel that includes carrageenan that is used to produce a gel.

15. US 5372825 discloses of a sour cream with an pH of 4.0-4.8 and the importance of that acidity level.

16. US 3842805 disclose that cooling that can be done in a household (by exposure to room temperature) can be accomplished rapidly in commercial practice.

17. EP 1287748 A1 discloses of a gellable shelf stable liquid food base for use with pastries.



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18. WO 98/34499 discloses of a gelled phase which is used to prepare other gelled products.


19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Mahafkey whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 1/6/05

Kelly Mahafkey  
Examiner  
Art Unit 1761

  
SPB 1761